

**In the High Court of Punjab and Haryana at Chandigarh**

**Civil Revision No. 1080 of 2020**

**Date of Decision: 14.2.2020**

**Nachhattar Kaur (since deceased) through Lrs.**

**---Petitioner**

**vs.**

**Gurmeet Kaur and others**

**---Respondents**

**Coram: Hon'ble Mrs. Justice Rekha Mittal**

**\*\*\***

**Present:** Mr. Nitin Sachdeva, Advocate  
for the petitioner

**\*\*\***

**Rekha Mittal, J.**  
**CM No. 3628 CII of 2020**

Prayer in this application is for impleading legal representatives of Rachhpal Kaur-respondent No. 3 (since deceased).

In view of averments made in the application supported by an affidavit of Darshan Singh and arguments advanced by counsel for the applicant, the application is allowed and persons mentioned in para No. 2 of the application are allowed to be brought on record as legal representatives of Rachhpal Kaur (since deceased), for the purpose of present lis only, subject to just exceptions.

Disposed of accordingly.

**Main case**

Challenge in the present petition has been directed against order dated 15.1.2020 (Anexure P-1) passed by the Civil Judge (Junior Division), Ludhiana whereby application for amendment of written

statement, filed by petitioner (since deceased represented by her Lrs), has been dismissed.

Counsel for the petitioner would argue that scope of amendment of written statement stands on a better footing than that of the plaint and amendment can be allowed at any stage of the proceedings. For this purpose, reliance has been placed upon judgment of the Patna High Court **Ramayan Mahto and another vs. Mahanth Bhagwan Das 2007 (4) PLJR 293.**

Another submission made by counsel is that by way of amendment even an admission can be withdrawn/explained as the defendant is permitted to raise inconsistent/contradictory pleas in the written statement. For this purpose, reference has been made to judgments of this Court **Gautam Sarup vs. Anand Sarup and others 2006(4) RCR (Civil) 248** and **Sagar Singh Salathia vs. Surinder Pal Singh 2009 (3) RCR (Civil) 37.** It is argued with vehemence that the trial court has wrongly dismissed the application even though the same has been filed at the stage when the case was fixed for rebuttal evidence because delay itself can not constitute a ground to dismiss the application for amendment.

I have heard counsel for the petitioner, perused the paper book particularly the documents annexed with the petition and judgments cited at bar.

Before advertng to the submissions made by counsel for the petitioner, it would be appropriate to take note, in brief, of the controversy involved in the suit. Gurmeet Kaur and Prabhjot Singh respondents-plaintiffs claimed their right to the suit property on the basis of Will dated

20.4.2007 purported to be executed by late Rai Singh son of Prem Singh, husband of plaintiff No. 1 and father of plaintiff No. 2. Nachhattar Kaur defendant (since deceased) is the mother of late Rai Singh. She filed the written statement admitting relationship of the parties particularly that late Sh. Rai Singh was husband of plaintiff No. 1 and plaintiff No. 2 is the son of plaintiff No. 1. The plaintiff did not raise an issue in respect of paternity of Prabhjot Singh plaintiff No. 2. The parties proceeded with the trial, on the basis of issues framed by the trial court and the material issue involved in the present litigation is in respect of Will dated 20.4.2007 propounded by respondents-plaintiffs. When the proceedings arrived at the stage of culmination i.e. pending for evidence in rebuttal by the respondents-plaintiffs, the instant application (Annexure P4) was filed seeking amendment of the written statement for withdrawing admission of the petitioner in respect of Prabhjot Singh to be son of plaintiff No. 1 and late Sh. Rai Singh. A relevant extract from para 6 of the application, reads as follows:-

“While preparing the arguments by their new counsel, who came to know from the written statement that the previous counsel has wrongly admitted out of inadvertence that plaintiff No. 2 Prabhjot Singh is the son of plaintiff No. 1 and Late Sh, Rai Singh and has also stated that Rai Singh was the owner of 1/4<sup>th</sup> share in the suit property. In fact, Rai Singh was the owner in possession of property.”

The respondents filed reply to the application controverting the allegations raised by the petitioner and contested her claim to amend the

written statement.

There is no dispute about the settled position in law that amendment of written statement stands on a better footing than that of plaint because the issue of limitation ordinarily is not involved. Amendment can also be allowed at any stage of the proceedings if the same is necessary for determining the real question in controversy and does not cause prejudice to other side for which he cannot be compensated with cost and the amendment is not actuated by mala fide.

Counsel for the petitioner has relied upon judgment of the Patna High Court **Ramayan Mahto and another's case (supra)** but in the said case it has been held that in a case in which admission made is sought to be withdrawn, same is not fit to be allowed. In **Sagar Singh Slathia's case (supra)**, this Court in para 8 in sub para(iii) had held that the admissions are the best form of evidence which a party can rely against the other but such admissions could always be explained whether the admission was made under the circumstances that either vitiated the admission or explained the admission.

In **Gautam Sarup's case (supra)**, it has been held in para 12 that if a person proves that the admission is not binding for one or more reason, the Court can refuse to take into consideration the admission allegedly made. Such right to prove admission wrongly made can be exercised only if an opportunity is given to the parties to enter into the play field and to prove such admission as wrong, incorrect and erroneous. If the amendment is to be declined, an opportunity to prove that the admission is wrong is not even made available which, in court's opinion, would be

unjustified. In the said case, the plaintiff(s) has set up a Will dated 23.9.1999 purported to be executed by one Shanti Sarup. Ms. Leela Jaitly daughter of Shanti Sarup arrayed as defendant No. 6 admitted Will dated 23.9.1999 having been executed by Shanti Sarup in favour of the plaintiff and defendant No. 7. In para 16 of the judgment, it was held that plaintiff is not prejudiced in any manner by allowing defendant No. 6 to amend the written statement. The burden of proving the Will is to be discharged by the plaintiff in any case. Whether admissions contained in the written statement dated 30.3.2000 were relevant for proof of Will or such admissions were made erroneously or under mistaken belief or misrepresentation or such admissions are conclusive, are the questions which can be decided only after defendant No. 6 is permitted to amend the written statement. The application for amendment was filed even prior to defendant No. 6 having entered into the witness box. The controversy with regard to withdrawal from admission was initiated in August 2000 even before amendment was made in the Code of Civil Procedure whereby proviso to Order VI Rule 17 has been added.

A plain but careful reading of the referred authority in extenso makes it evident that the court had considered the issue of amendment from the point of view of prejudice to the plaintiff in the given circumstances that the plaintiff had set up a Will who is under obligation in law to prove the Will in accordance with law, therefore, withdrawal from admission qua the Will would not cause prejudice to the plaintiff.

Reverting to the case at hand, in view of admission made by the petitioner that plaintiff No. 2 is the son of late Rai Singh, there was no

reason for the respondents to adduce any evidence to prove relationship of plaintiff No. 2 with plaintiff No. 1. In case, at this stage of the proceedings, the petitioner is allowed to withdraw from her admission aforesaid, it would result in de novo trial without any explanation justifying amendment of the written statement by displacing the respondents-plaintiffs from admission made in the written statement or that proposed amendment could not be made at an appropriate stage of the proceedings despite exercise of due diligence. I would hasten to add that this Court is not oblivious of the fact that amendment can be allowed even after commencement of trial if there are sufficient grounds for the same. As a matter of fact, in the present case, no reason much less tangible is forthcoming from the side of the petitioner to amend the written statement that amounts to withdrawal of her admission qua relationship of plaintiffs with deceased Rai Singh. As has been noticed hereinbefore, it was the new counsel engaged by the petitioner who came to know that previous counsel has wrongly admitted out of inadvertence that plaintiff No. 2 is son of plaintiff No. 1 and late Sh. Rai Singh. It is not plea of the petitioner that she detected any such mistake at any stage of the proceedings which necessitated filing of application for amendment. The mere fact that counsel engaged by the petitioner later in point of time did not find it palatable that petitioner had admitted relationship of plaintiff No. 2 with late Rai Singh can not constitute a valid ground for seeking amendment of the written statement at fag end of the trial whereby the petitioner would be successful to withdraw from her earlier admission and lead to de novo trial of the case. In this view of the matter, I do not find an error much less illegality in the impugned order that would call for

intervention.

For the foregoing reasons, the petition fails and is accordingly dismissed. However, nothing stated hereinbefore shall be construed as an expression of opinion on merits of the case.

(Rekha Mittal)  
Judge

14.2.2020  
paramjit

Whether speaking/reasoned: Yes  
Whether reportable : Yes/No